CFI UOL (3)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR(CG)

W.P.No. . . . . 2658 . . 2003

Petitioner : Smt. S.R.Shikharani
W/o P.Hari Kumar
Through Shri V.R.C. Pillai,
R/O Qr.No.SM A-21, Padum Nagar, Bhilai-3,
Post Bhilai-3, Tah. & Distt. DURG (C.G.).

VERSUS.

Respondent : P. Hari Kumar
S/O P.M.P. Kaimal
aged 36 years,
Occupation : Train Driver,
R/O B/2, Street No.7A, Sector (A)
Panchsheel Housing Society,
Post-Borsi, Tahsil and Distt.DURG (C.G.).

R.S. No. 2328/03 Presented by Shri R.S. Shrivastava 16.06.03

Writ Petition U/Articles 226/227 of the Constitution of India -

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. No. 2658 सन् 2003

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	03.9.2003 Shri Ajay Shrivastava, counsel for the petitioner. Heard. By this writ petition filed under Article 226/227 of the constitution of India petitioner has challenged the order dated 18.6.2003 passed by 5th Addl. Sessions Judge, Durg, in Civil Suit No.247A/03 filed under section 13 of the Hindu Marriage Act. Petitioner's case is that respondent has filed a divorce petition No.247A/2003 against her seeking divorce u/s 13 of the Hindu Marriage Act and during the pendency of the petition, the petitioner moved an application u/s 24 of the Hindu Marriage Act praying for interim maintenance so that the petitioner is able to defend herself in the proceedings of the divorce petition and to file written statement of the petition and in that application u/s 24 the petitioner has claimed Rs.10,000/- towards expenses for legal proceedings and Rs.5000/- per month for interim maintenance. The petitioner has also moved an application u/s 151 of the C.P.C. on 18.6.2003 requesting the learned Court to allow the application u/s 24 of the Hindu Marriage Act while directing the respondent to produce the pay slip as he is working as the Train Driver, but the Court passed the impugned order	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. No. 2658 सन् 2003

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that the petitioner should first file a written statement and thereafter the application u/s 24 will be considered.

I have heard learned counsel for the petitioner.

Learned counsel for the petitioner submits that the said order of the Subordinate Court is contrary to the provisions of Section 24 of the Hindu Marriage Act and the postponement of the order u/s 24 of the Hindu Marriage Act till the filing of the written statement is unjust and unreasonable, therefore the petitioner prays that by allowing this writ petition the trial Court be directed to decide the application filed by the petitioner u/s 24 of the Hindu Marriage Act. He further submits that unless the application of the petitioner u/s 24 of Act is decided and expenses is awarded to the petitioner she is not in a position to file the written statement, the trial Court ought to have decided the application of the petitioner first and then only it could have directed the petitioner to file a written statement.

I have perused the order of the trial Court. The trial Court vide its order dated 18.6.2003 has observed that the petitioner is already getting Rs.1500/- as interim maintenance u/s 125 of the Cr.P.C. and therefore looking to the circumstances of the case the petitioner was directed to file the written statement and thereafter the application u/s

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

24 of the Hindu Marriage Act will be decided. A perusal of the impugned order dated 18.6.2003 clearly goes to show that the petitioner is receiving Rs.1500/- per month as interim maintenance, that is why the subordinate Court passed an order that the petitioner should first file the written statement and then the application u/s 24 will be decided.

The petitioner instead of filing written statement has filed this writ petition under Article 227 of the Constitution of India challenging the said order of the subordinate Court. ~~and~~ Under Article 227 of the Constitution of India this Court is entitled to exercise the supervisory jurisdiction and this Court in exercise of supervisory jurisdiction is not entitled to convert itself into a court of appeal or indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences of mere formal technical character. Where a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has resulted, the High Court may step into exercise its supervisory jurisdiction.

A perusal of the impugned order reveals that none of the above conditions are satisfied in the matter. Moreover, the

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

petitioner is already getting a maintenance allowance of Rs.1500/- p.m. Therefore it cannot be said that the petitioner is not in a position to file the written statement.

Having considered the facts and circumstances of the case and material on record, I am of the opinion that it is not a fit case where this court should interfere in the impugned order of the trial Court.

Writ petition is dismissed. Accordingly, M.W.P.No.2442/03 and I.A.No.8076/03 also stand disposed of.

Sd/-
L.C.BHADOO
Judge

Rao